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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/829,033
Filing Date: April 09, 2001
Appellant(s): VENEGAS, FRANK

Frank Vengas, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on appealing from the Office action mailed on October 4, 2007.

(1) Real party in interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and interferences

The statement identifying the related appeals and interferences which will be directly affect or be directly affected or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of the amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Moore	(US Patent No.: 5,121,307)	June 9, 1992
Padilla et al.	(US Patent No.: 4,819,135)	April 4, 1989
Morse, Jr.	(US Patent No.: 3,855,924)	December 24. 1974

Note: While reviewing the Appeal Brief, the examiner noticed the reference Padilla et al. (U.S. Patent No. 4,819,135) has been inadvertently identified as "Padilla et al. (U.S. Patent No. 5,121,307)". The above typing error has been corrected in the following 35 U.S.C. 103(a) rejections, and it has not affected the Final rejections used as the basis of the Appeal Brief.

Being aware of the typing error identified above, the Appellant has addressed the prior art Padilla et al. with correct identification (US Patent No.: 4,819,135) in his responses.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (U.S. Patent No. 5,121,307).

Regarding claim 1, Moore ('307) discloses a lighted assembly 10 (Figure 4, column 2, line 18) further comprising:

- an elongated tubular body 11 having an open end 12, and a closed end 15 defining a cavity – enclosed by element 18 – (Figure 4);
- the open end 12 of the cavity receiving the stanchion 14 (Figures 1 and 4);
- a lighted assembly 10 (Figure 4, column 2, line 18) having a light source 17 (Figure 4, column 2, line 23) interconnected to a power source 22 (Figure 4, column 2, line 36);
- the light source 17 secured relative to the tubular body 11, and making its light visible exteriorly of the interior cavity (Figures 1 and 4; and
- an elongated tubular body receiving the stanchion in its cavity; and
- the open end of the elongated tubular body.

However, Moore does not specifically teach the stanchion having its open end proximate to the ground.

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the lighted assembly of Moore (U.S. Patent No. 5,121,307) by extending the length of the elongated tubular body, and accommodating entire stanchion with in itself, or making its open end proximate to the ground, since such a modification would have involved a mere change in size of the component. In addition,

encasing the stanchion substantially entirely would shield its surfaces from damage resulting from external moving elements, and improvement in aesthetic appearance.

The above-indicated motivation is also supported by the prior art admitted by the applicant, and included in the section entitled "Background of Invention" of the disclosure.

Regarding Claim 2, Moore does not disclose a lighted assembly including a power source positioned external to the lighted stanchion cover. Instead, Moore teaches positioning of the power source within the cavity defined by the cover and the stanchion external wall (Figure 4). It would be have been obvious to one of ordinary skill in the art at the time of the invention to relocate the power source – batteries – external to the cavity, since it has been held that rearranging parts of an invention involves only routine skill in the art. Further, positioning of the batteries on the external surface promotes easy and quick repair and replacement of the batteries.

Regarding claims 3-6, Moore discloses the lighting assembly additionally including:

- an electronic circuit (Figures 1, 3 and 4, column 3, lines 10-17) managing and controlling power for the device;
- the lighted assembly 10 further having a light source receptacle (not identified) receiving the lamp 17;
- the lighted assembly 10 further comprising a plurality of photovoltaic devices 28 (Figure 4, column 2, line 50) supported by the elongated tubular body 11 (Figures 1 and 4); and

- the power source being a battery 22 (Figure 4, column 2, line 36).

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (U.S. Patent No. 5,121,307) in view of Morse (U.S. Patent No. 3,855,924).

Regarding claims 7 and 8, Moore discloses a lighted assembly including an elongated tubular body with an open end and a closed end, and defining an interior cavity. However, Moore (U.S. Patent No. 5,121,307) does not teach the elongated tubular body displaying a message.

On the other hand, Morse (U.S. Patent No. 3,855,924) discloses a sign making stencil method applied for signs (Figures 2 and 3), and further teaches a post carrying a message including stenciled letters (Figures 2 and 3, column 2, lines 45-48; and column 4, lines 20-22).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the lighted assembly of Moore (U.S. Patent No. 5,121,307) by providing stenciled message sign on the post as taught by Morse ('924) for the benefit and advantage of displaying messages in simple manner, and with cost saving.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (U.S. Patent No. 5,121,307) in view of Padilla et al. (U.S. Patent No. 4,819,135).

Regarding claims 9-11, Moore does not disclose a lighted assembly comprising a tubular cover including one or more light dispersing windows, and a message displayed with a plurality of light diodes further comprising.

On the other hand, Padilla et al.(' 135) teaches a lighting device 10 (Figure 1) comprising a tubular body 12 (Figures 1,5 and 6, column 4, lines 24-27) and a plurality

of light emitting diodes (LEDs) 16 (Figures 1,5 and 6, column 4, lines 29-32) emitting light through a plurality of light dispersing windows. In addition Padilla et al.(U.S. Patent No. 4,819,135) teaches the light emitting diodes 16 being supported by the thickness of the tubular body of the cover 12 (Figures 7 and 8)

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the tubular cover of the lighted assembly of Moore with the tubular body taught by Padilla et al.(U.S. Patent No. 4,819,135) for benefits and advantages of high attention value displays, and for traffic safety (Warning) in dark. Further, the use of light emitting diodes LEDs as taught by Padilla et al. ('135) would impart benefits of high energy efficiency, compactness and long operational life.

(10) Response to Argument

Argument: Regarding Claim 1, the cover disclosed by Moore ('307) could not extend down to the ground surface due to the wires and other obstacles that telephone and utility poles are designed to support.

Response: As discussed above, regarding Claim 1, Moore ('307), teaches a cylindrical housing 11 including open end 12 for fitting over the top end of an electric power or telephone pole (Figures 1 and 2, column 2, lines 18-20).

However, Moore does not specifically teach the stanchion having its open end proximate to the ground.

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the lighted assembly of Moore ('307) by extending the length of the elongated tubular body, and accommodating entire stanchion with in itself, or making its open end proximate to the ground, since such a modification would have involved a mere change in size of the component. In addition, encasing the stanchion substantially entirely would shield its surfaces from damage resulting from external moving elements, and improvement in aesthetic appearance.

The above-indicated motivation is also supported by the prior art admitted by the applicant (lines 9-14, page 2 the section entitled "Background of Invention" of the specification).

Additionally, telephone and electric power poles are normally found carrying partial or full sleeves or casings either concealing wires running along its length for personal protection, or bypassing traversally running wires with openings or slits. Finally, posts carrying identification indicia or displaying messages is very common.

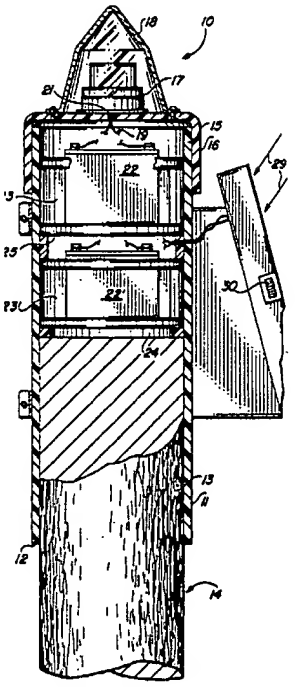


FIG. 4

More specifically, it will be noted that the first embodiment 10 of the invention includes an elongated tube 12 formed from a transparent flexible plastic material. The tube 12 is provided with a longitudinally extending slit 14. A plurality of light emitting diodes 16 are longitudinally spaced along the tube 12 and are embedded therein. Due to the extreme durability of these LEDs, they may be encapsulated in the plastic material during the manufacture of the tube 12. This provides a shock resistant mounting for the LEDs and also provides for an inexpensive and efficient manufacture. The LEDs 16 are interconnected by conventional electrical wiring 18 which may also be embedded in the tube 12.

Argument: Regarding Claims 7 and 8, there is no teaching or suggestion from the prior art to combine Moore ('307) with Morse ('924). Additionally, the prior art Morse ('924) is non-analogous art.

Response: Regarding claims 7 and 8, Moore discloses a lighted assembly including an elongated tubular body with an open end and a closed end, and defining an interior cavity. However, Moore ('307) does not teach the elongated tubular body displaying a message.

On the other hand, Morse (U.S. Patent No. 3,855,924) discloses a sign making stencil method applied for signs (Figures 2 and 3), and further teaches a post carrying a message including stenciled letters (Figures 2 and 3, column 2, lines 45-48; and column 4, lines 20-22).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the lighted assembly of Moore (U.S. Patent No. 5,121,307) by providing stenciled message sign on the post as taught by Morse ('924) for the benefit and advantage of displaying messages in simple manner, and with cost saving.

As discussed above, Moore ('307) discloses a lighting assembly mounted on a pole- a column- (Moore, Figure 1). Further, Morse ('924) teaches discloses a light assembly mounted on a post as discussed above.

Therefore, the applied prior arts Moore ('307) and Morse ('924) are analogous arts.

Argument: Regarding claims 7 and 8, although Morse (U.S. Patent No. 3,855,924) teaches a sign-making stencil method, it is entirely unrelated to a lighted stanchion. There is no teaching or suggestion from the prior art as to Moore/Morse, Jr. combination. Thus, prima facie obviousness clearly has not been established.

Response: Regarding claims 7 and 8, Moore discloses a lighted assembly including an elongated tubular body with an open end and a closed end, and defining an interior cavity. However, Moore (U.S. Patent No. 5,121,307) does not teach the elongated tubular body displaying a message.

On the other hand, Morse (U.S. Patent No. 3,855,924) discloses a sign making stencil method applied for signs (Figures 2 and 3), and teaches a post carrying a message including stenciled letters (Figures 2 and 3, column 2, lines 45-48).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the lighted assembly of Moore (U.S. Patent No. 5,121,307) by providing stenciled message sign on the post as taught by Morse (U.S. Patent No. 3,855,924) for the benefit and advantage of displaying messages in simple and cost saving manner.

Further, sign making stencil method as taught by Morse ('924) is well known knowledge generally available to one of the

ordinary skill in the art of displays for advertisement.

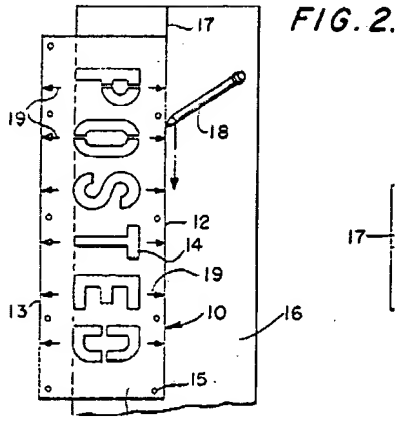
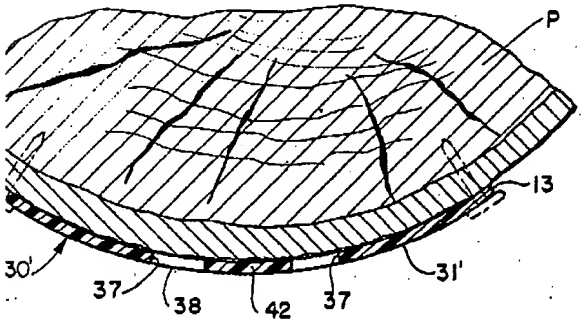


FIG. 2.

flush with the curved post. However the holding bars 38 tend to pull the edges of the center piece 42 snugly against the curved surface of the post P.

FIG. 11.



Apart from making a horizontal sign as above described, the same stencil 10 may also be used for making a vertically extending sign, as for example on a post or a tree 16 as indicated in FIGS. 2 and 3.

Thus, the above-detailed information has established prima-facie.

As discussed above, the prior art Morse ('924) teaches display of stenciled messages on a post. Thus, Morse ('924) is considered as an analogous art usable for displaying massages on a post.

In a simple mechanical invention a broad spectrum of prior art must be explored and it is reasonable to permit inquiry into other areas where one of ordinary skill in the art would be aware that similar problems exist

Argument: Regarding Claims 9-11, the prior arts Padilla ('135) is non-analogous art.

Response: Any need or problem known in the field of endeavor at the time of the invention and addressed by the patent [or application at issue] can provide a reason for combining the elements in the manner claimed.

Regarding claims 9-11, Moore discloses a stanchion having a tubular cover, which does not a lighted assembly including one or more light dispersing windows, and a message displayed with a plurality of light diodes further comprising.

On the other hand, Padilla et al. ('135) teaches a lighting device 10 (Figure 1) comprising a tubular sleeve/ body 12 (Figures 1,5 and 6, column 4, lines 24-27) comprising a plurality of light emitting diodes (LEDs) 16 (Figures 1,5 and 6, column 4, lines 29-32) emitting light through a plurality of light dispersing windows. In

addition Padilla et al. (U.S. Patent No. 4,819,135) teaches the light emitting diodes 16 being supported by the thickness of the tubular body of the cover 12 (Figures 7 and 8)

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the tubular cover of the lighted assembly of Moore with the tubular body taught by Padilla et al. ('135) for benefits and advantages of high attention-value displays, and for traffic safety (Warning) in dark. Further, the use of light emitting diodes LEDs as taught by Padilla et al. ('135) would impart benefits of high energy efficiency, compactness and long operational life.

Based on the above discussion, Padilla is an analogous art, as it is dealing with illuminated displays mounted on a sleeve covering a tubular body or post for eye-catching attention.

In an invention a broad spectrum of prior art must be explored and it is reasonable to permit inquiry into other areas where one of ordinary skill in the art would be aware that similar problems exist.

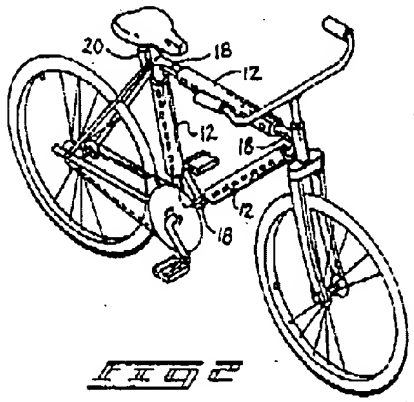


FIG 2

More specifically, it will be noted that the first embodiment 10 of the invention includes an elongated tube 12 formed from a transparent flexible plastic material. The tube 12 is provided with a longitudinally extending slit 14. A plurality of light emitting diodes 16 are longitudinally spaced along the tube 12 and are embedded therein. Due to the extreme durability of these LEDs, they may be encapsulated in the plastic material during the manufacture of the tube 12. This provides a shock resistant mounting for the LEDs and also provides for an inexpensive and efficient manufacture. The LEDs 16 are interconnected by conventional electrical wiring 18 which may also be embedded in the tube 12.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Hargobind S. Sawhney/

Conferees:

SPE: Mr. Blum David S

SPE: Lee, Jong-Suk (James)

12/21/2007